Supreme Court, U.S.

No. 98-1244 JAN 26 1999

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1998

WILLIAM BRADSHAW and ROBERT SHEPHERD,
Petitioners,

v.

IGLOO PRODUCTS CORPORATION,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit

SUPPLEMENTAL APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM BRADSHAW and ROBERT SHEPHERD,	)	
Plaintiffs, Counter-defendants,	)	
v.	)	No. 94 C 6497
IGLOO PRODUCTS CORPORATION,	)	
Defendant, Counter-claimant.	)	

MEMORANDUM OPINION AND ORDER

After hurting his back carrying a ice chest, plaintiff Robert Shepard wondered why he had never seen a cooler with wheels on the market. Ultimately, Shepard and plaintiff, William Bradshaw obtained U.S. Patent No. 4,873,841 (the "'841 patent") covering such an invention. On October 28, 1994, plaintiffs sued defendant Igloo Products Corp. ("Igloo") claiming that, inter alia, two of Igloo's coolers, the Cool Roller and the Rolling Kool Locker, infringed the '841 patent. Presently pending is Igloo's renewed motion for summary judgment and plaintiffs' motion to strike Igloo's motion for summary judgment and for other sanctions.

I. BACKGROUND

The '841 patent describes the invention as a portable cooler having a pair of wheels at one end of the cooler and an adjustable handle on the end opposite the wheels for pulling the cooler. The invention further describes lifting handles on opposite ends of the cooler. The pulling handle and one of the lifting handles are coupled to the same support axle. The specific language of claims 1, 6, and 11 of the '841 patent is set forth in the earlier decision in this case, Bradshaw v. Igloo Products Corp., 912 F. Supp. 1088 (N.D. Ill. 1996) ("Igloo I"), and need not be repeated here.

Igloo manufactures and sells two models of coolers, the Rolling Kool Locker and the Cool Roller, both of which plaintiffs allege infringe the '841 patent. The Rolling Kool Locker "has a rotatable lifting handle located on each end of the storage container compartment," but it does not have a separate lifting handle. Instead, one of the lifting handles is used to pull the cooler. The Cool Roller has separate lifting and pulling handles, although these handles are coupled to separate support axles.

On September 22, 1995, Igloo moved for summary judgment on the basis of noninfringement of claims 1, 6 and 11 of the '841 patent. Summary judgment was granted in Igloo's favor in a memorandum opinion and order dated January 5, 1996. Igloo I, 912 F. Supp. at 1101. Plaintiffs appealed that decision to the Federal Circuit.

The Federal Circuit affirmed the decision in part and vacated it in part and remanded the case back to this court. Bradshaw v. Igloo Products Corp., 101 F.3d 716 (Fed. Cir. 1996) (Table) ("Igloo II"). The Federal Circuit agreed with Igloo I's determination that there was no literal infringement by Igloo's products, but found error in the portion of the opinion addressing infringement under the doctrine of equivalents. Igloo has filed a renewed motion for summary

judgment. Based on supporting materials submitted by Igloo in connection with its motion, plaintiffs move to strike Igloo's motion for summery judgment.

II. PLAINTIFFS' MOTION TO STRIKE IGLOO'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs move to strike Igloo's renewed motion for summary judgment,[1] claiming that Igloo "sandbagged" plaintiffs by supporting its renewed motion with witnesses, statements, photographs and drawings not previously disclosed to them. Plaintiffs note that at a hearing on June 23, 1995, Igloo's attorney represented that, "They [plaintiffs] have all the documents. They have all our documents." Plaintiffs state that they did not find out about the additional witnesses and documents until January 10, 1997, when Igloo filed its renewed motion for summary judgment. In plaintiffs' view, Igloo should have produced: (i) photographs of garbage cans manufactured by Toter, Inc. (cited by Igloo as prior art); (ii) drawings and photographs of garbage cans manufactured by Gott Corp. (also cited as prior art); (iii) the affidavit of the chief executive officer of Toter; and (iv) the affidavit of one of Igloo's attorneys.

In response, Igloo explains that its evidence of prior art was not discovered until December 19, 1996, when Igloo's counsel, Richard Lione, contacted Frederick Schmidt, Director of Engineering at Igloo, and asked him whether he was familiar with any wheeled trash containers manufactured prior to 1998. Schmidt related that Gott manufactured such

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[1] In full, plaintiffs request that "this Court strike Defendant Igloo's 'Renewed Motion for Summary Judgment' and Supplemental Rule 12(M) Statement of Material Facts, in whole or in part; to hold the Defendant in default, or for other appropriate sanctions."

a container. Lione subsequently received a copy of 1986 catalogue pages displaying the containers from Gott. On January 7, 1997, Lione spoke to co-counsel, J. Ray Riley, about the catalog. Riley told Lione that he thought containers in the alley outside his office were also wheeled. Riley photographed the garbage cans, discovered to be manufactured by Toter, Inc. A paralegal in Lione's office contacted the chief executive officer of Toter and obtained his affidavit relating to the containers. In addition, Lione states that he photographed additional Toter garbage cans, distributed by the City of Chicago, in the alley behind his residence.

Plaintiffs' counsel did not contact Igloo's counsel prior to filing its motion, nor have plaintiffs filed a memorandum disputing any of the facts as Igloo relates them. Igloo's version of the facts will be accepted. None of the evidence cited by plaintiffs violates discovery obligations of Igloo. Igloo was not prohibited from continuing its investigation into prior art subsequent to the Federal Circuit's decision in this case. At the most, plaintiffs received Igloo's evidence three weeks after it was obtained. As to some of the evidence, plaintiffs received it as little as three days after it was obtained. These time periods are not unreasonable. This motion could have been avoided had plaintiffs investigated the reason for the late turnover of evidence. Plaintiffs' motion will be denied.

III. RENEWED MOTION FOR SUMMARY JUDGMENT

Igloo argues that it is entitled to summary judgment because prior art limits any expansion of claims of the '841 patent to cover its products under the doctrine of equivalents. Igloo's argument must be viewed under the standards set forth by The Federal Circuit in Igloo II. In

Igloo II, the Federal Circuit found error because the doctrine of equivalents analysis in Igloo I had:

> considered only whether selected limitations of the claims were disclosed in the prior art and failed to consider the patented invention as a whole.

Igloo II, 101 F.3d at *4. Second, the Federal Circuit stated that each of Igloo's products should have been considered on an individual basis. The Federal Circuit explained that Igloo I's analysis

> fail[ed] to consider that the scope of patent protection would have to be expanded beyond that afforded by the claims in two separate respects depending on the product alleged to infringe. Namely, the scope of the right to exclude would have to extend to pulling handles attached on two separate axles to cover the Cool Roller and it would have to extend to a combined lifting and pulling handle to cover the Rolling Kool Locker.

Nonetheless, the Federal Circuit concluded that "summary judgment of non-infringement may still be appropriate in this case after a proper analysis of the prior art." Id.

Since the Federal Circuit issued its decision in Igloo II, the Supreme Court has affirmed the viability and clarified the scope of the doctrine of equivalents under the 1952 revision of the Patent Act, 35 U.S.C. § 100 et seq. Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co., 117 S. Ct. 1040 (1997). The Supreme Court stated, however, that it "shared the concern of the dissenters below that the doctrine of equivalents...has taken on a life of its own, unbounded by patent claims." Id. at 1048. The Court cited approvingly the dissent of Judge Nies in reconciling the

doctrine of equivalents with the definitional and public notice functions of the statutory claiming requirement:

> "[A] distinction can be drawn that is not too esoteric between substitution of an equivalent or a component in an invention and enlarging the metes and bounds of the invention beyond what is claimed.
>
> . . . . .
>
> Where a claim to an invention is expressed as a combination of elements, as here, 'equivalents' in the sobriquet 'Doctrine of Equivalents' refers to the equivalency of an element or part of the invention with one that is substituted in the accused product or process.
>
> . . . . .
>
> This view that the accused device or process must be more than 'equivalent' overall reconciles the Supreme Court's position on infringement by equivalents with its concurrent statements that 'the courts have no right to enlarge a patent beyond the scope of its claims as allowed by the Patent Office.' [Citations omitted.] The 'scope' is not enlarged if courts do not go beyond the substitution of equivalent elements."

Id. at 1049 (citing Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co., 62 F.3d 1512, 1573-74 (Fed. Cir. 1995) (Nies, J., dissenting)) (emphasis in original). In other words, showing overall equivalency of the patented product against the accused product will not be sufficient to prove infringement.

> Each element contained in a patent claim is deemed material to defining the scope of the patented invention, and thus the doctrine of equivalents must

> be applied to individual elements of the claim, not to the invention as a whole.

Id. Thus, the analysis of the Cool Roller and the Rolling Kool Locker will be examined on a element by element basis, rather than determining whether Igloo's products are equivalent overall to plaintiffs' invention.

A. Effect of Hilton Davis on Prior Art Limitations to the Doctrine of Equivalents

In opposition to summary judgment, plaintiffs contend that the Supreme Court decision in Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co. changes Federal Circuit law relating to the doctrine of equivalents. According to plaintiffs, Hilton Davis holds that the only relevant inquiry under the doctrine of equivalents is the jury question of whether the accused product contains identical or equivalent elements to each claimed element of the patented invention. Plaintiffs argue that the prosecution history and prior art are irrelevant if substantial identity is shown. Finally, plaintiffs assert that:

> Hilton teaches that the rule against claim enlargement or expansion is no longer relevant to this Court's inquiry under the doctrine of equivalents.

Thus, plaintiffs argue that the Federal Circuit in Igloo II incorrectly directed this court to decide irrelevant issues.

Plaintiffs' argument that the judge has no role in assessing whether prior art limits the range of equivalency for a claim does not find support in Hilton Davis. In Hilton Davis, the Supreme Court noted the role of the judge in the pretrial process:

> Of course, the various legal limitations on the application of the doctrine of equivalents are to be determined by the court, either on a pretrial motion for partial summary judgment or on a motion for judgment as a matter of law at the close of the evidence and after the jury verdict. Fed. Rule Civ. P. 56; Fed. Rule Civ. Proc. 50. Thus, under the particular facts of a case, if prosecution history estoppel would apply or if a theory of equivalence would entirely vitiate a particular claim element, partial or complete judgment should be rendered by the court, as there would be no further material issue for the jury to resolve.

Id. at 1053 n.8. Thus, plaintiffs' assertion that all issues relating to the doctrine of equivalents are for the jury is overbroad. At a minimum, it will be assumed that Wilson Sporting Goods Co. v. David Geoffrey & Associates, 904 F.2d 677 (Fed. Cir. 1990) was not implicitly overruled by Hilton Davis. In Wilson Sporting Goods, the Federal Circuit held that "a patentee should not be able to obtain, under the doctrine of equivalents, coverage which he could not lawfully have obtained from the PTO by literal claims." Id. at 684. Because prior art limits what an inventor could have claimed, prior art also limits the range of permissible equivalents of a claim. Id. The Federal Circuit provided guidance as to the prior art analysis:

> Whether prior art restricts the range of equivalents of what is literally claimed can be a difficult question to answer. To simplify analysis and bring the issue onto familiar turf, it may be helpful to conceptualize the limitation on the scope of equivalents by visualizing a hypothetical patent claim, sufficient in scope to literally cover the

accused product. The pertinent question then becomes whether that hypothetical claim could have been allowed by the PTO over the prior art. If not, then it would be improper to permit the patentee to obtain that coverage in an infringement suit under the doctrine of equivalents. If the hypothetical claim could have been allowed, then prior art is not a bar to infringement under the doctrine of equivalents.

Id. This analysis will be applied in the instant case.

B. Doctrine of Equivalents

In Igloo II, the Federal Circuit directed that the doctrine of equivalents analysis be applied to the Cool Roller and the Rolling Kool Locker individually. Igloo concedes, at least for purposes of this motion, that the elements of claims 1, 6 and 11 addressing the wheel and axle configuration need no expansion to cover the Cool Roller and Rolling Kool Locker.

1. Cool Roller

The Cool Roller differs from the '841 patent in that the lifting and pulling handles (on the side opposite the wheels) are attached to separate axles whereas the '841 patent provides that the lifting and pulling handles are attached to the same axle. Element (e) of claim 1 claims "a pair of handle support structures coupled to opposite sides of the cooler compartment, each support structure having a handle support axle." Expanded to encompass the Cool Roller, element (e) would allow for more than "a pair" of handle support structures on the cooler since the Cool Roller

has three handle support structures. The Mason patent,[2] however, describes a wheeled cooler with one pulling and two lifting handles, each on separate axles. Element (e) of claim 1 is covered by prior art. In addition, element (f) of claim 6 and element (f) of claim 11 contain the same language as element (e) of claim 1, except that these elements state that the handle structures are positioned on the side of the cooler adjacent to the wheels. These elements, expanded by allowing more than a pair of handle support structures, are also covered by the Mason patent.

Plaintiffs contend that the Mason patent is not prior art because Mason post-dates the conception of the '841 patent. Plaintiffs assert that Bradshaw conceived of the invention over Labor Day weekend in 1987 and rendered drawings of the invention the next week. Plaintiffs, however, do not submit these drawings to support their contention, and Bradshaw testified at his deposition that he is not sure whether the sketches exist. Plaintiffs built

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[2] The Mason patent is described in Igloo I as follows:

> The "Mason" patent (United States Patent No. 4,846,493), filed in 1987, is a two-wheel cooler, but its wheels are on hinges that fold down for pulling and fold up so the cooler can lay flat. Its pulling handle is on the side opposite the wheels and has a hinge so that it can be folded in half. When unfolded, the pulling handle is long enough to permit pulling the handle without stooping. It is indicated that the pulling handle is attached below the lifting handle, but its exact location is not specified. Drawings show the pulling handle attached above the middle of the cooler's side.

Igloo I, 912 F. Supp. at 1099.

prototypes of their invention in the spring of 1988 and filed their patent application on April 3, 1989. The application for the Mason patent was filed on October 26, 1987. In other words, the Mason application post-dates the date of conception of the '841 patent if the alleged date that drawings were rendered applies, but it pre-dates the '841 patent if the alleged date the prototypes were built applies.

The first party to reduce an invention to practice possesses priority "unless the other party can show that it was the first to conceive the invention and that it exercised reasonable diligence in later reducing that invention to practice." Price v. Symsek, 988 F.2d 1187, 1190 (Fed. Cir. 1993). Conception is "the formation in the mind of the inventor, of a definite and permanent idea of the complete and operative invention, as it is hereafter to be applied in practice." FilmTec Corp. v. Hydranautics, 982 F.2d 1546, 1551 (Fed. Cir. 1992). Priority is a question of law determined by the underlying factual circumstances. Price, 988 F.2d at 1190. An inventor's testimony concerning priority cannot, standing alone, demonstrate priority over another patentee's rights. Id. at 1194. The inventor's testimony must be supported by some sort of corroborating evidence. Id.

Under these standards, the Mason patent is prior art. Plaintiffs have not presented any evidence other than their own testimony that the invention possesses priority over the Mason patent. Even if an inventor's testimony was sufficient to demonstrate priority, Bradshaw's testimony does not rise to the level of "conception" as defined by the Federal Circuit. Bradshaw's statement that he had an idea for a cooler with wheels is not a "definite and permanent idea of the complete and operative invention." Similarly, plaintiffs do not elaborate as to what Bradshaw's alleged drawings detailed; Bradshaw does not even state whether his sketches depicted pulling or lifting handles. As of

September 1987, the simple concept of a cooler with wheels was covered by the Bartholomew patent,[3] which was filed on December 11, 1986. Nothing in Bradshaw's testimony indicates that the idea he came up with over Labor Day weekend in 1987 is distinguishable from the Bartholomew patent. Conception of the '841 patent did not occur until the spring of 1988, when the prototype was created and after the Mason patent application had been filed. The Mason patent, therefore, is relevant prior art, which prevents expansion of element (e) to cover the Cool Roller.

The Mason patent also limits expansion of other elements. Element (f) of claim 1 (and element (g) of claims 6 and 11) claims "a lifting handle coupled to the handle support axle of each handle support structure enabling the cooler to be easily lifted to and from a vehicle." Expanded to fit the Cool Roller, element (f) would claim "each lifting handle coupled to a handle support structure. . . ." Again the Mason patent shows a cooler with two lifting handles, each coupled to a handle support axle.

Element (g) (and element (h) of claims 6 and 11) claims:

> a pulling handle coupled to one of the handle support axles wherein said pulling handle being easily rotated about the handle axle enabling a user to easily and comfortably pull the portable cooler.

---

[3] Igloo I described the Bartholomew patent as follows:

> The 1988 "Bartholomew" patent (United States Patent No. 4,724,681) is a two-wheel cooler that is pulled, but its wheels are on the short side and the pulling handle, which folds in two places, is on the same side as the wheels.

Igloo I, 912 F. Supp. at 1099.

Expanded element (g) would claim a "pulling handle coupled to a handle support handle wherein said pulling handle being easily rotated about the handle axle . . ." The Mason patent similarly shows a pulling handle that rotates about an axle. The handle described in the Mason patent is extendable, but the particular claim states that the cooler has "means connected to said cooler for pulling the same when the wheels are in the operable position." Thus, the Mason patent covers the Cool Roller's pulling handle and plaintiff could not have claimed an invention broad enough to include the handle configuration of the Cool Roller. The prior art of the Mason patent prohibits plaintiffs from showing that the Cool Roller infringes the '841 patent under the doctrine of equivalents

2. Rolling Kool Locker

As to the Rolling Kool Locker, Igloo contends that the elements of hypothetically expanded Claims 1, 6 and 11 are present in the prior art of the Mason and Bartholomew patents. The Rolling Kool Locker utilizes a single handle functioning as both a lifting and pulling handle, whereas the '841 patent describes a cooler with separate lifting and pulling handles, both "coupled" to the same axis. Elements (e), (f) and (g) of claim 1 describe this feature.

Element (e)[4] of claim 1 claims "a pair of handle support structures coupled to opposite sides of the cooler compartment, each support structure having a handle support axle." This claim needs no expansion to cover the Rolling Cool Locker. Elements (f) and (g)[5] of claim 1 describe two

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[4] This analysis also applies to element (f) of claims 6 and 11.

[5] This analysis also applies to elements (g) and (h) of claims 6 and 11.

different handles, the lifting handle and the pulling handle. Hypothetically expanded elements (f) and (g) would state as follows:

> a lifting handle coupled to the handle support axle of each handle support structure enabling the cooler to be easily lifted to and from a vehicle;
>
> a pulling handle, which may be either the same handle as the lifting handle or a separate handle, coupled to the handle support axle wherein said handle being easily rotated about the handle axle enabling a user to easily and comfortably pull the cooler

The question, then, is as the Federal Circuit posed it: does the scope of plaintiffs' right to exclude extend to a combined lifting and pulling handle to cover the Rolling Kool Locker, or would such a configuration ensnare prior art?

Igloo contends that the Mason patent constitutes prior art which limits the expansion of the claims of the '841 patent to cover the Rolling Kool Locker's handle configuration. But the Mason patent describes separate axles for the lifting and pulling handles, whereas under either the actual or expanded language of the '841 patent utilize a single axle. Igloo asserts that the relevant question is "would it have been obvious . . . to take a conventional cooler and mount it on a wheel/axle assembly fixed under one end of the cooler compartment?" In light of the Federal Circuit's direction, however, this question is too narrow. Certainly it was obvious to attach a pulling handle (or separate pulling and lifting handles) to the side of the cooler opposite the wheels, e.g., the Mason patent. The Federal Circuit, however, directed this court to consider whether the

'841 patent could extend to a combined pulling and lifting handle. Igloo has not pointed to any prior art describing a pulling and lifting handle (or handles) attached to a single axle. Although the cooler described in the '841 patent utilizes separate handles for pulling and lifting, the question of whether the two handles are equivalent to one combined pulling and lifting handle is one for the jury.[6]

IT IS THEREFORE ORDERED that:

(1) Motion of plaintiffs Robert Shepard and William Bradshaw to strike and for other sanctions [82] is denied.

(2) Renewed motion of igloo Products Corp. for summary judgment [77-1] is granted in part and denied in part. The motion is granted as to Igloo's Cool Roller product. The motion is denied as to Igloo's Rolling Kool Locker product.

(3) The parties are directed to submit a final pretrial order in accordance with Local Rule 5.00 in open court at 9:15 a.m. on October 21, 1997.

ENTER:

/s/ William T. Hart
UNITED STATES DISTRICT JUDGE

DATED: AUGUST /s/ 28, 1997

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[6] It should be noted that this opinion does not restrict Igloo from submitting to a jury a general instruction on obviousness, which would allow the jury to consider not only the scope and content of the prior art, but also the level of ordinary skill in the art as well as other factors.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

William Bradshaw and Robert Shepherd	)	
Plaintiffs,	)	
V.	)	No. 94 C 6497
Igloo Products Corp.	)	
Defendant.	)	

ORDER

This cause coming to be heard on Plaintiffs' Motion to Voluntarily Dismiss Claims with respect to Kool Locker a/k/a Rolling Kool Locker and for Entry of a Final Order with respect to the Cool Roller Product, the parties stipulating to the Order, the parties appearing by their respective attorneys, the court having jurisdiction and the court being fully advised in the premises,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Voluntarily Dismiss Claims with respect to Kool Locker a/k/a Rolling Kool Locker and for Entry of a Final Order with respect to Cool Roller Product is granted. The Clerk of the Court is directed to dismiss without prejudice all claims in the Complaint with respect to the Kool Locker a/k/a Rolling Kool Locker products. The Court finding there is no just reason for delay, the Clerk of the Court is further directed to enter a final and appealable judgment to all claims in the Complaint against Plaintiff with respect to the Cool Roller products. The Clerk of the Court is further directed to enter judgment dismissing

Defendant-Counterplaintiff's counterclaim cause of action without prejudice for lack of subject matter jurisdiction. Each party shall pay their own costs.

Stipulated to by:

/s/ Jeffrey W. Brend
Attorney for Plaintiff

/s/ Richard G. Lione
Attorney for Defendant

Enter:

/s/ William T. Hart
UNITED STATES DISTRICT JUDGE

Dated: /s/ 12-2-97

AO 450(Rev. 5/85)Judgment in a Civil Case

United States District Court
Northern District of Illinois
Eastern Division

F I L E D
/s/ COPY
DEC 2 1997

WILLIAM T. HART, JUDGE
UNITED STATES DISTRICT COURT

William Bradshaw, et al.

JUDGMENT IN A CIVIL CASE

V.

Case Number: 94 C 6497

Igloo Products Corp.

□ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

■ Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that all claims in the complaint with respect to the Kool Locker a/k/a Rolling Kool Locker products are dismissed without prejudice. Court finding there is no just reason for delay enters a final and appealable judgment to all claims in the complaint against plaintiff with respect to the Cool Roller products. Judgment is further entered dismissing defendant-counterplaintiff's counterclaim cause of action

without prejudice for lack of subject matter jurisdiction. Each party shall pay their own costs.

Michael W. Dobbins, Clerk of Court

Date: 12/2/97

/s/ William J. Stasiek
William J. Stasiek, Deputy Clerk

United States Court of Appeals for the Federal Circuit

98-1157

WILLIAM BRADSHAW and ROBERT SHEPHERD,

Plaintiffs-Appellants,

v.

IGLOO PRODUCTS CORPORATION,

Defendant-Appellee.

ORDER

A combined petition for rehearing and suggestion for rehearing in banc having been filed by the APPELLANT, and the petition for rehearing having been referred to the panel that heard the appeal, and thereafter the suggestion for rehearing in banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the suggestion for rehearing in banc be, and the same hereby is, DECLINED.

The mandate of the court will issue on November 4, 1998.

FOR THE COURT,

/s./ Jan Horbaly

Jan Horbaly
Clerk

Dated: October 28, 1998

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

OCT 28 1998

JAN HORBALY
CLERK

cc: JEFFREY W. BREND
RICHARD G. LIONE

BRADSHAW V IGLOO PRODUCTS, 98-1157
(DCT - 94-CV-6497)

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* *
* Note: Pursuant to Fed. Cir. R. *
* 47.6, this order is not citable as *
* precedent. It is a public record. *
* *
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